

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL NO. 1:CR-00-105
	:	
	:	
v.	:	
	:	
	:	
RONNIE PEPPERS	:	

MEMORANDUM AND ORDER

Before the court is a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The motion is properly briefed and is ripe for disposition; however, one issue requires a hearing before disposition of all issues.

The issue is the claim of actual innocence to the charge of possession of a firearm as an armed career criminal. The gun was discovered in the back seat of a vehicle owned and driven by petitioner after a valid traffic stop on November 14, 1997. This court recognizes that “[m]ere assertions of innocence unfounded on ‘specific evidence’ do not constitute a fair and just reason to withdraw a guilty plea.” *United States v. Cannestraro*, 734 F. Supp. 1110, 1121 (D.N.J. 1990). In the instant case, Petitioner attaches to his reply brief as exhibit (b) what appears to be a written confession by a third party as to the placement of the gun in the car, allegedly without Petitioner’s knowledge. The confession was written on November 18, 1997, before a local police officer. Petitioner claims he received a copy of this confession in late August 2003. He was sentenced on August 13, 2003. By letter dated September 1, 2003, it appears Petitioner brought this confession to the attention of defense counsel. (Pet.’s Reply Br. at Ex. (c).)

This court needs to determine the circumstances of the giving of the statement, the delay in Petitioner's receipt of such statement,¹ and defense counsel's knowledge of the statement.

The court recognizes that eight years has elapsed since the statement was given; however, a hearing will be required to address the issue. **IT IS HEREBY ORDERED THAT:**

1) Dennis E. Boyle, Esquire, 1525 Cedar Cliff Drive, Camp Hill, Pennsylvania 17011, telephone number (717) 737-2430, is appointed to represent Petitioner for purposes of the hearing described above.

2) The hearing will be held on Thursday, February 2, 2006, at 10:30 a.m., in Courtroom No. 3, Eighth Floor, Federal Building, Third and Walnut Streets, Harrisburg, Pennsylvania.

3) The Clerk of Court shall prepare the appropriate paperwork and send it to attorney Boyle as soon as possible.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: January 4, 2006.

¹The person who authored the statement was Petitioner's girlfriend at that time.